

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2010-385-C - ORDER NO. 2011-509
JULY 29, 2011

IN RE: Application of Allied Wireless) ORDER HOLDING
Communications Corporation d/b/a Alltel for) RULING ON
Designation as an Eligible) APPLICATION IN
Telecommunications Carrier) ABEYANCE

I. PROCEDURAL BACKGROUND

This matter comes before the South Carolina Public Service Commission (“Commission”) upon the petition of Allied Wireless Communications Corporation, d/b/a Alltel (“Allied”) as a competitive eligible telecommunications carrier (“CETC”) in South Carolina, pursuant to 42 U.S.C. § 214(e)(2), for purposes of receiving federal high cost universal service support (“USF”). This is the first such Application that the Commission has considered since the Federal Communications Commission (“FCC”) issued its order imposing an emergency interim cap on federal USF for CETCs.¹ Therefore, it is the first Application for which the Commission must consider that designating an additional ETC will reduce funding for previously-designated CETCs by a corresponding amount.²

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 08-122, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*).

² Designation of HTC Communications, LLC as a CETC also reduced funding available to previously-approved CETCs, but on an ad hoc basis. The Commission held a hearing on HTC’s application on February 28, 2008, and issued its order designating HTC as an ETC on April 17, 2008. The FCC subsequently issued its *Interim Cap Order* on May 1, 2008; however, the cap was effective as of March 2008. Thus, while HTC’s funding was not included in the capped amount for South Carolina, HTC was designated prior to the FCC’s issuance of the *Interim Cap Order*, so the Commission did not have the issue of capped funding before it.

A public hearing was held in this matter on March 3, 2011. Allied was represented by Charles L.A. Terreni and David LaFuria (*pro hac vice*). Allied presented the direct and rebuttal testimony of Rohan Ranaraja.

Farmers Telephone Cooperative, Inc. and FTC Communications, LLC (“Farmers”), Horry Telephone Cooperative, Inc. (“Horry”), and Piedmont Rural Telephone Cooperative, Inc. and PRTCommunications, LLC (“Piedmont”) (collectively, the “Rural Companies”), were represented by M. John Bowen, Jr., and Margaret M. Fox. The Rural Companies presented the direct and surrebuttal testimony of Glenn H. Brown. M. John Bowen, Jr., and Margaret M. Fox also represented the South Carolina Telephone Coalition (“SCTC”). The SCTC did not present a witness.

The Office of Regulatory Staff (“ORS”) was represented by Nanette S. Edwards and C. Lessie Hammonds. ORS presented the testimony of Christopher J. Rozycki.

II. LEGAL REQUIREMENTS FOR DESIGNATING CETCs

This docket was established to consider Allied’s petition to be designated as a wireless CETC for purposes of receiving federal USF. Section 254(e) of the federal Telecommunications Act of 1996 (“Act”) provides that only an ETC as designated under Section 214(e) of the Act may receive federal universal service support.

The goal of universal service is to ensure the widespread availability of affordable basic local exchange telephone service. Universal service has long been a public policy. See, e.g., 47 U.S.C. § 151, § 254; see also S.C. Code Ann. § 58-9-280(E), Commission Order No. 2001-419 in Docket No. 97-239-C at pp. 25-31 (Section III, Universal Service Policy and History). Any consideration of a petition to designate an ETC for purposes of

receiving federal funds intended to preserve and advance universal service must be undertaken in a manner consistent with this overall goal.

Section 214(e) requires that a telecommunications carrier seeking designation as an ETC must offer the services that are supported by federal universal service support mechanisms, and must advertise the availability of those services and the charges therefore using media of general distribution. See also S.C. Code Ann. Regs. § 103-690(C)(a)(6)-(7).

The Federal Communications Commission (“FCC”) has defined the services that are supported by federal universal service support mechanisms. This Commission has also imposed various additional requirements as found in 26 S.C. Code Ann. Regs. 103-690 (Supp. 2010).

In addition to these requirements and prior to designating a carrier as an ETC, the Commission must find that it is in the public interest to do so. Section 214 of the Federal Telecommunications Act provides in part as follows:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.
47 U.S.C. § 214(e)(2) (emphasis added.)

Thus, the Commission may choose not to designate additional ETCs in areas served by rural telephone companies. In fact, former Chairman of the FCC, Kevin

Martin, expressly recognized that it may make perfect sense to have only one designated ETC in some high-cost areas.³

If the Commission decides to designate an additional ETC in an area served by a rural telephone company, it must first find that such designation is in the public interest. The FCC's public interest standard has evolved to become more stringent over time. See Tr. at 212.

States are free to apply their own public interest standard, and this Commission has carefully examined the public interest in each case. See, e.g., Order No. 2007-804 in Docket No. 2003-227-C, at pp. 7-13; Order No. 2007-805 in Docket No. 2007-193-C, at pp. 5-8 and 14-17; Order No. 2008-273 in Docket No. 2007-402-C, at pp. 5-8. This Commission has further defined the public interest standard as it relates to designating ETCs in areas served by rural telephone companies by promulgating a regulation, which provides:

(b) Public Interest Standard. Prior to designating an eligible telecommunications carrier pursuant to 47 U.S.C. Section 214(e)(2), the commission must determine that such designation is in the public interest. In doing so, the commission shall consider, *inter alia*, the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering.

S.C. Code Ann. Regs. § 103-690(C)(b).

³ Chairman Martin stated: "I also note that I have some concerns with the Commission's policy – adopted long before this Order – of using universal service support as a means of creating 'competition' in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund." 2nd R&O and FNPRM in CC Docket No. 00-256, 15th R&O in CC Docket No. 96-45, and R&O in CC Docket Nos. 98-77 and 98-166, Released November 8, 2001, *Separate Statement of Commissioner Kevin J. Martin*.

More recently, with the adoption of the *Interim Cap Order*, the FCC appears to be reflecting what this Commission has known all along – that federal USF is a scarce and important public resource, and that the public interest determination must be carefully weighed and determined in each case, and particularly those affecting areas served by rural telephone companies. See, e.g., Order No. 2007-805 at p. 8.

III. HISTORY OF CETC DESIGNATIONS IN SOUTH CAROLINA

This Commission has previously designated three wireless carriers as CETCs for purposes of receiving federal high-cost USF. See Order No. 2007-804 in Docket No. 2003-227-C (designating Cricket Communications f/k/a Hargray Wireless); Order No. 2007-805 in Docket No. 2007-193-C (designating FTC Communications); Order No. 2008-273 in Docket No. 2007-402-C (designating HTC Communications). In addition, the Commission has designated a number of carriers, including wireless carriers, whose applications were limited to the receipt of federal support for the provision of services to low-income subscribers, *i.e.*, Lifeline and Link-Up support. See, e.g., Order No. 2009-879 in Docket No. 2009-144-C (designating SafeLink Wireless); Order No. 2011-76 in Docket No. 2010-91-C (designating Assurance Wireless).

Alltel Communications, Allied's predecessor in the exchanges at issue in this proceeding, has previously filed two applications before the Commission for designation as an ETC throughout the State of South Carolina. See Docket Nos. 2003-151-C and 2007-151-C. Alltel's first Application was withdrawn with prejudice following a hearing on the matter. See Commission Order No. 2003-702. Alltel's second Application was held in abeyance after Alltel agreed in the context of an FCC merger proceeding not to

seek additional federal USF as a CETC.⁴ See Commission Order No. 2007-910 (holding application in abeyance). Alltel's second request for designation as a CETC was later withdrawn as well. See Commission Order No. 2011-246 (granting Alltel's request to withdraw application). Allied has argued that it is a separate company and that Alltel's prior actions have nothing to do with Allied. While it is true that Allied is a different company, the exchanges and network are the same. Allied's witness, Mr. Ranaraja, was employed by Alltel and testified for Alltel in the second proceeding. In fact, in some other states where Alltel was previously designated as a CETC, Allied was designated essentially in Alltel's place.⁵

This Commission has carefully considered the impact on the public interest of designating additional CETCs in South Carolina, and has been prudent in doing so. More recently, the FCC became alarmed by and took steps to reign in the explosive growth in high-cost federal USF disbursements. On May 1, 2008, the FCC issued its order adopting an interim, emergency cap on the amount of high-cost support that CETCs may receive. *Interim Cap Order* at para. 1. This interim cap remains in place as the FCC considers comprehensive universal service and intercarrier compensation reform.

⁴ Noting that Alltel was the "largest beneficiary of competitive ETC funding and account[ed] for 29 percent of all high cost fund payments to ETCs, the FCC placed an immediate cap on Alltel's receipt of CETC funding, finding that it was in the public interest to do so in the context of the proposed transaction because of "Alltel's significant role in the expansion of the high cost fund." Memorandum Opinion and Order, *In the Matter of Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings, LLC, Transferee, for Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 07-128, FCC 07-185 (rel. October 26, 2007). This occurred before the FCC ordered an emergency cap on high cost USF funding for all CETCs.

⁵ *See, e.g., Application of Allied Wireless Communications Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Docket No. 31734, Order Granting ETC Status (filed October 14, 2010) (in which the Georgia PSC granted Allied's request for ETC designation on a retroactive basis so that there would be no gap between Alltel's and Allied's provision of service as ETCs).

As previously noted, the most recent Application requesting CETC designation for the purpose of receiving high-cost federal USF that was considered by this Commission was granted in April 2008, prior to the FCC's issuance of the *Interim Cap Order*. Thus, this proceeding marks the first time that this Commission has had before it an application from a carrier to be designated as a CETC that would require the Commission to consider diverting funds from other previously-approved CETCs. Part of the Commission's deliberation, therefore, should be whether it is in the public interest to do so.

IV. DISCUSSION

As the Applicant in this proceeding, Allied bears the burden of demonstrating that its designation as a wireless CETC would serve the public interest. See Commission Order No. 2007-805 at p. 6 (citing to FCC's orders in *Virginia Cellular* and *Highland Cellular*);⁶ Commission Order No. 2008-273 at p. 5 (citing to FCC's *ETC Designation Order*).⁷ The public interest dynamic regarding federal universal service has been changed, since, as a part of the implementation of the National Broadband Plan, the FCC has proposed fundamental changes to the current wireline and wireless high-cost funding processes, including a phase-out of CETC support. The FCC proposes to replace current high-cost universal service funding mechanisms with a new Connect America Fund, and

⁶ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as and Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, FCC 03-338, CC Docket No. 96-45 (rel. January 22, 2004); *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as and Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, FCC 04-37, CC Docket No. 96-45 (rel. April 12, 2004).

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Red at 6392-95, ¶¶ 48-53 (2005).

support wireless infrastructure investment in currently unserved areas with a new Mobility Fund. According to witness Brown, these changes will have a profound impact on rural South Carolina wireline and wireless carriers. Tr. at 210-211. The FCC has stated publicly that it expects to rule on revising the Federal Universal Service Fund and implementing a number of reforms by the end of 2011. (See Notice of Proposed Rulemaking, http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/FCC-11-13A1.pdf at 11, Paragraph 21.)

Further, Allied's proposed designated area is so large that, if the Commission were to approve its Application, Allied would become the largest recipient of CETC funding in South Carolina, receiving 41.6% of the capped amount, at the expense of other previously-approved CETCs, who would see a corresponding percentage reduction in their funding. See Tr. at 239-240; Exhibit GHB-2 included in Hearing Exhibit No. 5 (Allied's proposed federal USF draw would be 41.6 % of the capped amount, reducing other carriers' amounts by the same proportion); Tr. at 123, lines 10-12 (Allied's witness conceded that Mr. Brown's calculations regarding the reduction of funding for other carriers are correct). Allied's service area is very large, comprising the entire service areas of 8 rural telephone companies, 38 BellSouth/AT&T wire centers, and 11 Verizon/Frontier wire centers. See Exhibit 2 to Application. In response to questions from the Commission, Allied acknowledged that its entry would impact other carriers' plans. See Tr. at 155-156. In fact, Allied's witness stated that it would be "difficult for [Allied]" (to comply with its own proposed plan) if the Commission were to designate

additional CETCs in Allied's service area after approval of Allied's Application. See Tr. at 167.

Considering the fact that the FCC intends to establish new support mechanisms by the end of 2011 and to phase out CETC support thereafter, and the fact that designating Allied as a CETC at this time would divert a large percentage of funding away from already approved CETCs under the present system, we do not believe that it is in the public interest to approve Allied's Application at this time. We believe that it is reasonable and prudent under the circumstances to hold our decision in abeyance until after the FCC rules on reforms to the Federal Universal Service Fund. If the FCC does not rule by the end of 2011, this Commission can revisit this decision.

V. FINDINGS AND CONCLUSIONS

1. The Commission has authority, pursuant to Section 214(e)(2) of the Act, to make a determination regarding Allied's Application for designation as a wireless CETC for purposes of receiving federal USF.

2. Section 214(e)(2) of the Act allows the Commission discretion in all ETC designation cases to consider the public interest, convenience and necessity.

3. Pursuant to the statutory standard set forth in Section 214(e)(2) of the Act, the Commission "may," but is not required to, designate more than one carrier as an ETC for a service area served by a rural telephone company.

4. With respect to areas served by rural telephone companies, before the Commission may designate additional ETCs to serve such areas, Section 214(e) of the

Act requires that the Commission make an affirmative finding that such designation is in the public interest.

5. The applicant has the burden of proving that it meets the requirements to be designated, and that its designation as an ETC is in the public interest. See Commission Order No. 2007-805 at p. 6; Commission Order No. 2008-273 at p. 5.

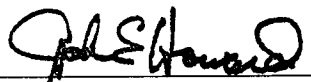
6. Universal service funding is intended to ensure that consumers in all regions of the nation have access to quality telecommunications services at just, reasonable, and affordable rates, and that the services and rates in rural, insular, or high cost areas are comparable to those in urban areas. 47 U.S.C. § 254(b). In determining whether granting a request for designation as an ETC serves the public interest, we must keep in mind this overriding principle.

7. Given the uncertain times in which the country and the state find themselves, when the FCC is considering significant wholesale changes to the federal USF and, in particular, the manner in which CETCs are funded, the most prudent thing for this Commission to do is to hold in abeyance Allied's Application for designation as a CETC and rule after the FCC has adopted its changes to the Federal Universal Service Fund. It is not in the public interest to rule on this Application at this time. The FCC has stated that it intends to rule on federal USF reforms by the end of 2011, if not sooner. If the FCC reforms of the Federal Universal Service Fund do not occur by the end of 2011, this Commission can revisit this matter.

IT IS THEREFORE ORDERED THAT:

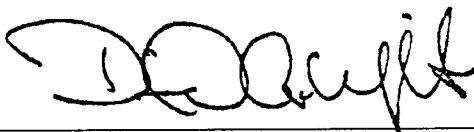
Allied's request for designation as a wireless competitive eligible telecommunications carrier within certain areas of the State of South Carolina is hereby held in abeyance until such time as the FCC rules on revisions to the Federal Universal Service Fund. The FCC has stated publicly that it expects to rule on revising the Federal Universal Service Fund by the end of 2011, if not sooner. If the FCC does not make a ruling concerning the Federal Universal Service Fund by the end of 2011, this Commission can revisit this decision.

This Order shall remain in full force and effect until further Order of the Commission.



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman

(SEAL)